

Testimony of

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On

Election Reform

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Mr. Chairman and members of the Committee: I am Wade Henderson, Executive Director of the Leadership Conference on Civil Rights. I am pleased to appear before you today on behalf of the Leadership Conference to discuss the need to ensure that all Americans have equal access to the right to cast their ballots -- and to have their votes, once cast, accurately counted.

The Leadership Conference on Civil Rights (LCCR) is the nation's oldest and most diverse coalition of civil rights organizations. Founded in 1950 by Arnold Aronson, A. Phillip Randolph, and Roy Wilkins, LCCR works in support of policies that further the goal of equality under law. To that end, we promote the enactment, and monitor the enforcement, of our nation's landmark civil rights laws. Today the LCCR consists of over 180 organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups. It is a privilege to represent the civil and human rights community in addressing the Committee today.

More than 35 years have passed since the enactment of the Voting Rights Act in 1965. In that time, we have made significant progress in making that Act's promise of "one person, one vote" a reality for all Americans. The serious and extensive irregularities reported last November, however, make clear that we still have a long way to go. While yesterday's poll taxes and literacy tests are long gone, they have been replaced by punch-card machines and inaccurate voting list purges as barriers to minority enfranchisement.

The need for today's discussion should be apparent to all. The right to vote is among the most fundamental of freedoms guaranteed the American people. Without it, we are not a republic, not a democracy. For this reason, reports of voting irregularities in Florida have captured widespread attention. Barriers to minority voting participation, however, are by no means limited to Florida. Because the need to ensure the integrity of our democratic processes is national in scope, federal attention and action are both appropriate and necessary.

In my testimony today, I will first review some of the problems that make clear the pressing need for action. I will then identify some fundamental principles that must be included in any effective reform proposal.

Overview of Voting Irregularities in the 2000 Election

Across America, voters -- especially minority voters -- were effectively denied the franchise in a variety of ways:

Minority voters often faced a significantly greater risk that their votes would not be counted accurately. In Cook County, Illinois, for example, an analysis by *The Washington Post* concluded that only 4.9% of ballots were invalidated in precincts with a minority population of less than 30%, while the invalidation rate nearly doubled -- to more than 9% -- in precincts with a minority population of 90% or more.

Similarly, a lawsuit recently filed in Georgia on behalf of African American voters in DeKalb, Fulton, and Cobb counties alleged that the punch-card machines used in predominantly African American counties had an error rate more than double that of optical scanning machines used elsewhere in Georgia.

In Florida, too, punch-card balloting systems used in counties with substantial African American populations (such as Miami-Dade and 24 other counties) are alleged to have a substantially higher error rate than other systems. Nearly four percent of ballots in Florida counties using punch-card systems were recorded as having no vote, while the no-vote rate under the optical-scan systems used elsewhere in Florida was only 1.43%.

Asian American, Haitian American, Latino, and other language minority voters were denied language assistance to which they were entitled. In many jurisdictions covered by Section 203 of the Voting Rights Act, language minority voters are entitled, upon request, to bilingual materials and/or the assistance of a bilingual poll worker. In New York City, however, Chinese-speaking voters reported that ballots at several polling sites inaccurately translated candidates' party identifications; others reported that absentee ballots contained mistakes in the Chinese-language instructions.

Asian American Legal Defense and Education Fund monitors observed that some New York polling sites had no interpreters at all, prompting some voters to leaving without casting a ballot due to the absence of language assistance; interpreters at other sites were observed to provide inaccurate or improper directions.

And in some Florida counties, Haitian American and Latino voters reported that their requests for language assistance were denied.

Eligible voters were wrongly “purged” from the rolls. Florida, for example, ordered the “purging” of ex-felons and other ineligible voters from official lists of eligible voters prior to the November election. During this process, however, many qualified voters were wrongly identified as ineligible to vote. For example, a number of African American voters reported that they were told by poll workers that they had been dropped from the rolls because they were ex-felons – even though they had never been arrested, much less convicted, of any crime.

Other eligible minority voters reported that they were provided no reason for their purging; they were simply turned away on the grounds that their names did not appear on the list of registered voters. Moreover, many of these purges occurred very late in the process – i.e., after the individuals purged had already voted in the September primary – thus offering little, if any, corrective opportunity.

Eligible voters were wrongfully denied the opportunity to vote because voter registrations and change-of-address information were not processed in a timely and accurate manner. Asian American voters in New York reported that they completed their registration forms, but were never provided confirmation of their registration, nor information about the location of their polling places.

Similarly, in Ohio, African American voters reported that they were not notified that their polling places had been changed; when they tried to vote at their old polling places, they were turned away and denied even the opportunity to cast provisional ballots.

Minority voters in Florida and elsewhere have reported that they submitted timely and complete voter registration packages (or notices of change in address), only to be turned away at the polls because there was no record of their registration or move. As Fumiko Robinson testified before the NAACP in explaining her feelings while driving Florida voters to the polls on election day, only to have them turned away: “[I]t was almost as if I brought people to the poll to be embarrassed.”

Eligible voters were barred from voting because complete and accurate lists of eligible voters were not available at each polling place. The Kansas City Star reported that, in St. Louis, “voters whose registration was not on record at their polling places had to travel to the election board’s downtown office, where several hundred people waited up to three hours just to confirm their registration.”

In some Florida counties, certain registered voters were placed on an “inactive” list and were not included on their respective precincts’ lists of voters. These unlisted voters were able to vote only if their precinct polling official contacted the central county office to confirm eligibility. Many of the telephone lines were busy for extended periods of time, however, thus thwarting eligibility verification. And while some precincts were apparently provided with laptop computers to enable pollworkers to access directly the list of inactive-yet-eligible voters, observers reported that few, if any, laptops were assigned to majority black precincts.

Voters who realized that they had inaccurately marked their ballots before casting them were wrongfully denied the opportunity to correct them. When voters realize that they have inaccurately marked their ballots before submitting them, the law entitles them to a second – and even a third – ballot to correct any such errors. However, numerous Florida voters have reported that their requests for new ballots were denied.

Many voting systems are inaccessible for persons with disabilities and do not allow many voters with disabilities to cast a secret ballot. According to the Federal Election Commission, there are at least 20,000 polling places across the country that are physically inaccessible to voters with disabilities. Moreover, punch-card machines are particularly difficult for persons with vision impairments or arm or hand mobility impairments.

The list goes on and on. Voters who did not have identification or who did not appear on eligible lists were improperly denied the opportunity to vote by affirmation or affidavit. Voters already in line when polling places closed were denied the opportunity to cast their ballots. Unfortunately, time permits only a partial listing of the reported irregularities. But even this incomplete discussion demonstrates the extent and severity of the problem – and the need for reform.

Such barriers to voting inflict double pain. First, they effectively disenfranchise a significant number of eligible voters. Second, they fuel the perception that minority voters and voters with disabilities are not really welcome to participate fully in our nation's democratic institutions. A system riddled with such irregularities fosters cynicism about our nation's commitment to its professed ideal that every vote counts. As a result, many minority voters concluded that some votes matter more -- or less -- than others; that every vote does NOT count; that the system does NOT work. As Donnise DeSouza, who was denied access to the polls on Election Day, described her feelings in testimony before the NAACP: "I felt very outraged. I felt I had been stripped of something important and personal to me and I felt violated"

Principles for Meaningful Reform

Because the need to ensure the integrity of our democratic processes is of national significance, these reports make clear the need for Congressional action. While we are mindful of concerns regarding federalism and the appropriate balance of responsibility between the federal government and the states, we strongly believe that Congress has the authority -- and the responsibility -- to maintain the integrity of federal elections and ensure that states and localities have the resources to improve election technology and administration procedures. To this end, we urge the enactment of legislation that would encourage the adoption of upgraded, accurate equipment and uniform, nondiscriminatory standards for election administration in all federal elections.

We are aware that several legislative proposals to remedy the problems of Election 2000 are already under discussion, with more on the horizon. We welcome the opportunity to work together with this Committee and others in Congress on the specific details of these efforts.

We note at the outset, however, that the issue of election reform must be considered separately from any other legislative issue. Some have suggested that Congress should consider election reform in combination with the issue of campaign finance reform, which will come to the Senate floor in the next few weeks. While the Leadership Conference has taken no position on campaign finance legislation, we strongly believe that the issue of election reform is of such critical importance that it requires full and fair evaluation on its own merits, apart from any other proposal.

As these important discussions move forward, let me identify some fundamental principles that must be included in any meaningful reform proposal:

First, any comprehensive election reform proposal must be in place in time for the 2002 elections. We must ensure that we learn from and act upon – rather than repeat -- the painful lessons learned in 2000. To this end, the federal government must supply adequate resources on the front end to permit states and localities to make the upgrades and changes necessary to ensure that all Americans have equal and meaningful access to the right to vote in the 2002 elections.

Second, any reform proposal must adhere to the principle of “one person, one vote.” The right to vote is a right guaranteed to all Americans, regardless of their race, their neighborhood, their income, or their level of education. This applies both to the right to cast one’s ballot and the right to have that vote, once cast, counted accurately. We must acknowledge and address widespread evidence that punch-card machines and certain other voting systems carry disproportionately – and unacceptably – high error rates. Federal funding should be made available to encourage state and local jurisdictions to upgrade election equipment to ensure that all votes are counted accurately and equally. For example, federal efforts should encourage states and localities to adopt election technology that produces no more than a 1% error rate.

Third, any reform proposal must address procedural as well as technological obstacles to voting. Minority voters faced at least two types of barriers to full and equal voting participation this past November: 1) the use of outdated voting equipment with significant failure rates; and 2) inadequate (and often discriminatory) voter registration and purging practices. We must both modernize the machinery of voting and improve procedures for the administration of elections. Both of these issues deserve significant attention and funding at the federal level.

Fourth, any reform proposal must not limit or conflict with the Voting Rights Act and the National Voter Registration Act, nor any other existing civil and voting rights statute, such as the Americans with Disabilities Act and the Voting Accessibility for the Elderly and the Handicapped Act. Indeed, any effective reform proposal must include a commitment to and investment in full and vigorous enforcement of these laws – for example, ensuring that minority language voters and voters with disabilities receive the assistance to which they are entitled.

With these baseline principles in mind, a number of more specific measures deserve careful consideration as we explore ways to encourage the development of uniform, nondiscriminatory procedures for election administration:

- Registering to vote should be simple and easy. Current registration procedures too often discourage, rather than encourage, voting. For example, under current practice, voter registration often closes 30 days before the election. Providing for same-day registration or otherwise shortening registration deadlines (i.e., keeping registration open until shortly before Election Day) would encourage voter registration. Procedures better facilitating change-in-address notification (e.g., by allowing voters who change addresses within the same state to file a change-of-

address and vote on Election Day without re-registering) would further ease registration difficulties.

- Voting itself should be as simple and easy as possible. Voters should be made aware of their rights to request assistance, to correct their ballots if they believe they have made an error, and to alternative identification procedures if they do not have a photo identification.
- To encourage full civic participation, we should support changes designed to ease long lines and other time pressures on voters (e.g., making Election Day a federal holiday, ensuring that anyone in line at closing time is allowed to vote, extending voting hours, holding multi-day and/or weekend elections).
- In light of last fall's extensive reports of inaccurate and/or incomplete voter lists, federal legislation should encourage the development of uniform mechanisms to ensure that persons whose names do not appear on the list of registered voters at the polling place may still cast a provisional ballot without undue delay -- subject to challenge if they are shown to be ineligible to vote.
- Federal legislation should encourage development of standards to ensure that decisions to purge certain voters from the rolls are carefully verified. For example, the National Voter Registration Act prohibits certain types of purges -- i.e., those needed to verify addresses -- within 90 days of an election. The same 90-day rule could be applied to all types of purges, including those for ex-felons. Moreover, state or local governments are better equipped to carry the burden of verifying that registered voters are actually not entitled to vote before purging -- rather than placing the burden on the voter to establish his or her eligibility.
- The practice of felony disenfranchisement should be eliminated. Not only is the disenfranchisement of those who have completed their sentences inconsistent with basic democratic principles, it disproportionately harms minorities and thus dilutes the gains of the Voting Rights Act. Moreover, the Florida experience helps demonstrate that restoring the franchise to ex-felons who have served their time will also eliminate the significant number of "false positives" that wrongly denied the vote to individuals who were not ex-felons, as well as save millions of dollars in administrative costs.

Finally, we recognize that we have not addressed issues related to voting over the Internet, even as states and localities are increasingly likely to turn to high-tech solutions to election challenges. We note that while such technology offers significant opportunities to eliminate certain voting irregularities, we must also be mindful of possible racial, ethnic or income disparities in voter access commonly characterized as aspects of the digital divide. The Leadership Conference is

currently studying this issue, and plans to share our observations and recommendations in the near future.

Conclusion

The Leadership Conference on Civil Rights welcomes the opportunity to work with this Committee and others in Congress on election reform consistent with the principles we have outlined. It is impossible to overstate the importance of this endeavor, since continued confidence in the integrity of our democratic processes will hinge on our success or failure. Together, we must ensure that the painful lessons learned in 2000 are not forgotten, and that the ideals of 1965 are not abandoned.